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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

To: The Commission

COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

The Interactive Services Association (ISA), by its attorneys, hereby submits these comments on the Federal-State Joint Board's Recommended Decision regarding universal service in the above-captioned proceeding.^{1/} The ISA, formed in 1981, is the leading association devoted exclusively to promoting consumer interactive services worldwide. The ISA has approximately 350 members from a variety of industries, including online, Internet access, advertising, cable TV, computer hardware and software, consumer electronics, financial services, magazine and newspaper publishing, and telephony. The ISA urges the Commission to adopt the Joint Board's finding that Internet access and online information services are not telecommunications services, and to explicitly acknowledge that the carrier common line (CCL) charge is a universal service subsidy.

^{1/} See *Federal-State Joint Board on Universal Service, Recommended Decision*, FCC 96J-3 (rel. Nov. 8, 1996) ("Recommended Decision"); *Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision*, Public Notice, DA 96-1891 (rel. Nov. 18, 1996).

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I. The Commission Should Affirm the Joint Board's Finding that Internet Access Service is Not a Telecommunications Service.

The Joint Board found, as the ISA had argued in its comments, that Internet access service is not a telecommunications service.^{2/} Because Section 254(d) of the Telecommunications Act of 1996 (the "1996 Act") mandates contributions to the universal service support mechanisms only by those providing telecommunications services, those providing Internet service are not required to contribute to universal service support. The Commission should affirm the Joint Board's finding that Internet access service is not a telecommunications service. Internet access service does not meet the statutory definition of a "telecommunications service" under the 1996 Act.^{3/} Rather, Internet access service falls within the definition of an "information service," and both the Joint Board and the Commission have found that information services are not telecommunications services.^{4/}

II. The Commission Should Explicitly Affirm that the CCL Charge is a Universal Service Subsidy.

The Joint Board urged the Commission to eliminate the usage-sensitive CCL charge for the recovery of nontraffic-sensitive local loop costs because it is economically inefficient.^{5/} The ISA agrees with the Joint Board's recommendation. However, there is no need for the Commission to decide whether to eliminate or modify the CCL charge in this proceeding since that

^{2/} Recommended Decision at ¶ 69.

^{3/} See 47 U.S.C. § 153(43), (46).

^{4/} See 47 U.S.C. § 153(20); Recommended Decision at ¶ 790; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, FCC 96-325 at ¶ 995 (rel. Aug. 8, 1996).

^{5/} See Recommended Decision at ¶¶ 754, 776.

question is better addressed in the access charge reform proceeding which the Commission plans to institute next week. In the context of access charge reform, the Commission can decide how best to modify the present usage-sensitive CCL charge (*e.g.*, replace it with a flat-rate charge or other method of recovering local loop costs) after the development of an appropriate record.

The Commission *should* find in this proceeding that the CCL charge is a universal service subsidy. By its terms, Section 252(d) of the Communications Act requires, with just one exception, that prices charged for interconnection and use of local exchange carrier (LEC) networks, of which the CCL charge is one component, be based on cost.^{9/} The sole exception is the jurisdiction provided by Section 254 to require that those who provide telecommunications pay an above-cost surcharge in order to support universal service.^{7/} Finding that the CCL charge is a non-cost-based charge would make clear that the charge is a universal service subsidy which can be lawfully levied only on telecommunications services, as it is today. This would leave unaffected the FCC's ability to retain, modify, or eliminate the CCL charge in the upcoming access reform proceeding.

While a few commenters have contended that the CCL charge is merely a mechanism by which a LEC recovers part of the cost of local loop facilities, this contention misses the point. The CCL charge is not based on cost, because it recovers LEC local loop nontraffic-sensitive costs through traffic-sensitive pricing. This mismatch ensures that the price charged for use of

^{9/} 47 U.S.C. § 252(d)(1).

^{7/} See 47 U.S.C. §254(d) (requiring every provider of interstate telecommunications services to contribute, and permitting the Commission to require contributions of "other provider[s] of interstate telecommunications").

a LEC's local loop facilities bears no relationship to the cost of the loop. It also ensures that many of those interconnecting with LEC facilities pay far more than cost.^{8/}

Many commenters recognize that the CCL charge is not a cost-based charge. For example, BellSouth, in characterizing the CCL charge as an implicit support mechanism for universal service, notes that CCL charges "represent, in part, a carry-over to the post-divestiture environment of the support that historically had been derived from interstate toll charges."^{9/} The FCC staff report on universal service and the FCC's notice of proposed rulemaking in this proceeding confirm the position of these commenters. The staff report noted that low-usage customers of local loops are subsidized by the CCL charge.^{10/} The FCC notice instituting the present proceeding likewise noted that "the imposition of [CCL] charges . . . appears to constitute a universal service support flow."^{11/}

^{8/} See Comments of Bell Atlantic at 11 ("the interstate costs allocated to a particular common line may not always match the relative interstate/intrastate use of that facility"); Recommended Decision at ¶ 775 ("it would be preferable for prices related to the loop, such as the CCL charge, to be set in a manner that is consistent with the manner in which the loop's cost is incurred").

^{9/} BellSouth comments at 8. See also Time Warner comments at 19 ("the bulk of the support from interstate services for universal service comes from the [CCL charge]"; California PUC comments at 20 (the CCL charge was designed "to shift the burden for NTS costs from local exchange subscribers to toll users"); SNET comments at 6 ("interexchange carriers have implicit subsidies included in the rates that they pay for access"); Ad Hoc Telecommunications Users Committee comments at 20 ("the CCL [charge] is inconsistent with the policy guidelines of the 1996 Act which require federal support to be explicit and provider-neutral"); AT&T comments at 3 ("universal service is promoted through a set of broad-based cross-subsidies [many] funded by the LECs' access charges, which are set substantially above cost, allegedly in order to subsidize rates for the LECs' basic local telephone service").

^{10/} See Common Carrier Bureau, FCC, *Preparation for Addressing Universal Service Issues: A review of Current Interstate Support Mechanisms* 91-92 (1996).

^{11/} *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board*, FCC 96-93, at ¶ 113 (rel. Mar. 8, 1996).

The history of access charge development likewise confirms that the CCL charge is an above-cost universal service surcharge. In fact, the Commission explicitly justified adoption of the CCL charge in order to lower rates for basic telephone service by shifting part of the burden of paying for local loop facilities from the end user to interstate carriers. The decision to recover this portion of the fixed costs through a CCL charge arose out of the FCC's desire, well-documented in the record, to ensure that the access charge regime protect the goal of universal service.^{12/} The Commission therefore should find that the CCL charge is a universal service subsidy.

Respectfully submitted,

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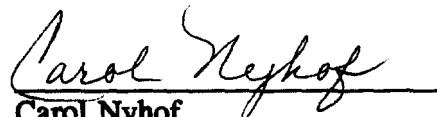
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Dated: December 19, 1996

^{12/} See *MTS and WATS Market Structure, Third Report and Order*, 93 F.C.C.2d 241 (1983) (CCL charge implemented out of concern that residential users would cancel local exchange service), *modified on recon.*, 97 F.C.C.2d 682 (1983), *modified on recon.*, 97 F.C.C.2d 834 (1984), *aff'd in principal part*, *NARUC v. FCC*, 737 F.2d 1095, 1134 (D.C. Cir. 1984) (CCL charge "is essentially a subsidy"), *cert. denied*, 469 U.S. 1227 (1985); *Id.*, *Recommended Decision and Order*, 57 Rad. Reg. 2d 267, 278 (Joint Board 1984) (CCL charges will "ensure that implementation of subscriber line charges for residential and single line business customers will not undermine universal service").

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Interactive Services Association was served this 19th day of December, 1996, by first class mail, postage prepaid or by hand (*) to each person on the attached service list.


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